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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOBIAS GEORG TOLLE,
THOMAS DURBAUM, and REINHOLD ELFERICH

Appeal 2009-002458
Application 10/521,849
Technology Center 2800

Decided: September 30, 2009

Before, BRADLEY R. GARRIS, CHUNG K. PAK, and
CHARLES F. WARREN, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 16 in the Office Action mailed June 28, 2007. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2007).

We affirm the decision of the Primary Examiner.

Claim 1 illustrates Appellants' invention of a device which comprises a circuit arrangement and an electrically conductive plate having an induction function, and is representative of the claims on appeal:

1. A device which comprises a circuit arrangement and an electrically conductive plate having an inductive function, which inductive function corresponds to a structure of at least one spiral-shaped slit formed in the plate, said spiral-shaped slit comprising at least two full 360° loops around a solid portion of the plate located at a center position of the spiral-shaped slit.

The Examiner relies upon the evidence in these references (Ans. 3):

Tanigawa	US 5,621,636	Apr. 15, 1997
Pilniak ¹	EP 0 522 475 B1	Jan. 13, 1993

Appellants request review of the grounds of rejection under 35 U.S.C. § 103(a) advanced on appeal by the Examiner: appealed claims 1 through 16 over Pilniak in view of Tanigawa. Br. 7; Ans. 3.

Appellants argue the claims as a group. Br. 8 and 10. Thus, we decide this appeal based on claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Issue

The issue in this appeal is whether Appellants have shown that Pilniak's conductive plate having an inductive function illustrated in Pilniak Figure 5a is not encompassed by appealed claim 1.

Opinion

We considered the totality of the record in light of Appellants' arguments with respect to claim 1 and the ground of rejection advanced on appeal. *See, e.g., In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection by showing

¹ We refer to the translation of Pilniak prepared for the United States Patent and Trademark Office by FLS, Inc (PTO 06-2909 March 2006).

insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.””) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)); *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (“After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.”) (citing, *inter alia*, *In re Spada*, 911 F.2d 705, 707 n.3 (Fed. Cir. 1990)).

The principal issue in this appeal is the interpretation of the language of appealed claim 1 that specifies in pertinent part, a device which comprises at least, among other things, an electrically conductive plate having an inductive function in which the plate has at least one “spiral-shaped slit comprising at least two full 360° loops around a solid portion of the plate located at a center position of the spiral-shaped slit.”

Appellants submit that the phrase “a solid portion of the plate located at a center position of the spiral-shaped slit” must be interpreted as the solid portion of the plate is located at the exact “center portion” of the spiral-shaped slit. Br. 8-9. Appellants argue, in this respect, that “the center position in Pilniak is in the large opening or is simply a hole in the plate 11.” Br. 9 (emphasis original).

We cannot subscribe to Appellants’ interpretation of the subject claim language. The disclosure in the Specification describes and illustrates electrically conductive plates having several spiral-shaped slits, wherein each spiral-shaped slit has two full 360° loops around a solid portion of the plate located in the “central region” of the spiral-shaped slit. Spec. e.g.

4:5-6, 5:23-26, 6:24-30, and 7:2-4, and Figs. 2, 5, 7, and 8. In three of the four plates, contact points are provided in the “central region” at the center of each spiral-shaped slit. Spec. Figs. 2, 7, and 8. However, in Specification Figure 5, “plate 13’ is provided with cut-outs 50 to 56 wherethrough pieces of magnetic material project,” and “[t]he cut-outs 50, 51 and 52 are all provided in the respective central region of the slits 20a’, 20b’ and 20c’.” Spec. 5:19-24. We are of the opinion that one skilled in this art would find that cut-outs or holes 50, 51, 52 are at the center of each of spiral-shaped slits 20a’, 20b,’ 20c’ in plate 13’ as described in the Specification and illustrated in Specification Figure 5.

Accordingly, we give the claim language “a solid portion of the plate located at a center position of the spiral-shaped slit” its broadest reasonable interpretation in light of the Specification, of a solid portion of the plate located at any position in the “center position of the spiral-shaped slit.” In other words, the solid portion of the plate can be centered around a cut-out or hole of any dimension that is located in the center position of the spiral-shaped slit. *See, e.g., In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1378-79 (Fed. Cir. 2007); *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004), and cases cited therein; *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997). We are reinforced in our view by the claim language “spiral-shaped slit comprising at least two full 360° loops around a solid portion of the plate located at a center position of the spiral-shaped slit,” wherein the indefinite article “a” coupled with the open-ended term “comprising” opens claim 1 to encompass plates having a solid portion at

any position in the center of the spiral-shaped slit. *See, e.g., KCJ Corp. v. Kinetic Concepts Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000).

Appellants do not dispute the Examiner's finding that Pilniak's electrically conductive plate illustrated in Pilniak Figure 5a has a spiral slit comprising at least two full 360° loops around a solid portion of the plate located in the center position of the spiral-shaped slit, wherein there is a cut-out or hole in the center of the center position. Br. 8; Ans. 7. Appellants also do not dispute the Examiner's findings with respect to Tanigawa. *See generally* Br.; Ans. 3-4.

Thus, in our opinion, Appellants have not established that Pilniak's conductive plate having an inductive function illustrated in Pilniak Figure 5a is not encompassed by appealed claim 1.

Conclusion

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of Pilniak and Tanigawa with Appellants' countervailing evidence of and argument for nonobviousness and conclude, by a preponderance of the evidence and weight of argument, that the claimed invention encompassed by appealed claims 1 through 16 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

The Primary Examiner's decision is affirmed.

Appeal 2009-002458
Application 10/521,849

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

psb

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